

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4148 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

BHAVESH @ BHAILAL MAGANBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Ms.Siddhi S. Talati, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 21/11/98

ORAL JUDGEMENT

1. This writ petition under Article 226 of the Constitution of India has been filed in the nature of certiorary and habeas corpus for setting aside the detention order dated 13th February 1998 passed by the Detaining Authority and also for immediate release of the petitioner from illegal detention.

2. From the grounds of detention it seems that the detaining Authority was satisfied that the petitioner is a dangerous person within the meaning of Section 3(c) of

the Gujarat Prevention of Anti-social Activities Act, 1985 (for short "PASA Act"). The cases registered under various sections of the Indian Penal Code and punishable under Chapter XVI and XVII have been shown in the grounds of detention. Besides this three unregistered offences disclosed by the witnesses, who requested to keep their identity secret, were also narrated in the grounds of detention. These offences are also punishable under aforesaid Chapters of the Indian penal Code. After reaching subjective satisfaction that the petitioner's activities disturbed public order it was decided that he should be put under preventive detention. As such the impugned order under Section 3(2) of the PASA Act was passed. It is this order which is under challenge in this petition.

3. Only two grounds were pressed by the learned Counsel for the petitioner. The first ground is that the activities of the petitioner cannot be said to be prejudicial to the maintenance of public order hence the detention order is invalid. The second contention has been that there was inordinate delay in passing the detention order from the last registered case against the petitioner and in view of this unexplained inordinate delay the detention order as well as continued detention of the petitioner becomes illegal.

4. Coming to the first point I do not find any substance in the contention that the activities of the petitioner were not prejudicial to the maintenance of public order. The petitioner was considered to be a dangerous person. Dangerous person has been defined under Section 3(c) of the PASA Act. According to this definition a person is said to be dangerous when he either by himself or as a member or leader of a gang habitually commits or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or XVII of the Indian Penal Code. The grounds of detention indicate that as many as five cases of different dates under Sections 323, 324, 504, 114; 379, 114; 379, 114; 379, 114; and 379, 114 I.P.Code were registered and the cases are pending in competent Criminal Court. Besides this, three unregistered incidents were also disclosed. One incident was about six months prior to 4.2.1998 and the second was of 16th January 1998 and the last was dated 25th January 1998. These cases, therefore, indicate that the petitioner is habitually committing offences punishable under the aforesaid Chapters of the Indian penal Code. He is, therefore, dangerous person within the meaning of Section 3(c) of the PASA Act.

5. The State Government under Section 3(1) or an authority having delegated the power from the State Government, under Section 3(2) can order preventive detention of such person if it finds that the action of such person is prejudicial to maintenance of public order. Under Section 3(4) of the PASA Act if the activity of a dangerous person affects adversely or are likely to affect adversely the maintenance of public order he can be ordered to be placed under preventive detention.

6. So far as registered cases against the petitioner are concerned no indication is found in the grounds of detention that by indulging in activities like chain snatching, committing theft of auto-rickshaw, scooter or by demanding money from the complainant the petitioner created a situation which adversely affected maintenance of public order. However, three unregistered incidents disclosed in the grounds of detention clearly indicate that on these occasions the activities of the petitioner were such which certainly created disturbance of public order.

7. The first incident which took place six months before 4.2.1998 reveals that by the high-handed and criminal activities of the petitioner, atmosphere of fear and terror was created. Surrounding shop owners and larrigallawalas who collected at the spot were threatened. The terror was so enormous that the shop keepers had to shut down the shutters of their shops and the traffic was also held up. If such situation was created it can certainly be said to be a situation of disturbance of public order.

8. Likewise the incident dated 16.1.1998 also created similar disturbance towards maintenance of public order when the petitioner ran towards crowd having razor and gupti, etc. and threatened the witnesses as well as members of the public. There was traffic disorder and fear and terror was created in the area.

9. On the third incident again similar indication is found. The result, therefore, is that these unregistered offences furnished prima facie material that the activities of the petitioner were adverse to the maintenance of public order. He was, therefore, rightly considered to be a dangerous person and the detention order could be passed against him and it was rightly passed. On this ground the impugned order cannot be quashed.

10. The second ground is however sufficient for holding that the detention of the petitioner is illegal. The contention has been that there was inordinate delay in passing the detention order. According to the grounds of detention last registered offence came into existence on 5.10.1997 as CR No.63/97 under Section 379 and 114 of Indian penal Code for committing theft of auto-rickshaw. Auto-rickshaw was recovered in front of the house of the petitioner. He was enlarged on bail on 22.10.1997 in this offence. The detention order was passed on 13.2.1998. There was thus practically more than four months delay, viz. 4 months and 8 days delay, in passing the detention order.

11. The delay in passing detention order is no ground for setting aside such order. However, there must be some order justifying the delay in passing the detention order. The detaining authority under his Affidavit dated 20.11.1998 has tried to explain the delay. Needless to say that about 3 to 4 days back I made observation that affidavits by the detaining Authority are neither properly sworn nor properly filed. Those observations were little cared while filing this Affidavit. Cuttings over-writings and additions in this affidavit have not been initialled by the Executive Magistrate before whom the Affidavit was sworn. The Executive Magistrate did not care to sign each para of the affidavit nor did he put initial on each page of the Affidavit. The verification clause of the Affidavit is also defective and the observation made by me earlier in another case were not at all considered by this Detaining Authority. Affidavit is thus waste paper and has no evidenciary value in the eyes of law.

12. Even if liberal view is taken the said affidavit offers no satisfactory explanation about delay in passing the detention order. In Para : 7 of this Counter Affidavit the Detaining Authority admits that last case against the petitioner was registered on 5.10.1997. He also admits that the petitioner was enlarged on bail on 22.10.1997. He has given three dates, viz. 4th, 7th and 8th February on which statements of witnesses were recorded, but the purpose of these dates is not disclosed and this offers no explanation what to say of satisfactory explanation of delay. The detaining Authority has skilfully remained silent in keeping secret the date on which the Sponsoring Authority prepared his report and submitted the same to him. On the other hand he had deposed that the report of the Sponsoring Authority was received by him on 11.2.1998. It is not

the date of receipt which is material, but the date of submission of report by the Sponsoring Authority which has not till date been disclosed.

13. The learned A.G.P. has argued that because the petitioner committed three unregistered offences, one six months before 4.2.1998, another on 16.1.1998 and the third on 25.1.1998, hence there was delay in submission of report by the Sponsoring Authority. This also cannot be said to be satisfactory explanation because this explanation is not coming in the counter Affidavit of the Detaining Authority. The Sponsoring Authority was not expected to wait for commission of three unregistered offences by the petitioner. Thus, my over-all impression is that from the counter Affidavit no satisfactory explanation is forthcoming from the detaining Authority regarding inordinate delay in passing the detention order. This has therefore rendered the detention as well as continued detention of the petitioner illegal. The detention order has, therefore, to be quashed.

12. The writ petition, therefore, succeeds and is hereby allowed. The impugned order of detention contained in Annexure : A to the writ petition dated 13.2.1998 is quashed. The petitioner shall be released forthwith unless wanted in some other criminal case.

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